

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Initially, the Applicants would like to thank the Examiner for the indication that claim 4 is allowed and that claims 15, 21-29, 37, 39 and 40 are allowable.

In the Official Action, the Examiner objects to claim 17 because "that are" on line 7 thereof should be --that is--. In response, Applicants respectfully disagree with the Examiner's requirement. In claim 17, the term "that are" refers to the "arm members." Since "arm members" is plural, "that are" is grammatically correct. Accordingly, it is respectfully requested that the objection to claim 17 be withdrawn.

In the Official Action, the Examiner rejects claim 22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner argues that there is insufficient antecedent basis for the term "puncturing needle" in line 2 thereof. In response, Applicants respectfully disagree with the Examiner because claim 22 further defines that the puncturing member is a puncturing needle. Thus, as is proper, "puncturing needle" is first defined in claim 22 and proceeded with "a." Accordingly, it is respectfully requested that the rejection of claim 22 under 35 U.S.C. § 112, second paragraph, be withdrawn.

In the Official Action, the Examiner rejects claims 1, 6, 8-14, 17-19, 35 and 38 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,119,913 to Adams et al., (hereinafter "Adams").

In response, Applicants respectfully traverse the Examiner's rejection under 35 U.S.C. § 102(b) for at least the reasons set forth below.

The Applicants respectfully disagree with at least the Examiner's rejection of independent claims 1 and 38 for at least the following reasons. With regard to claim 1, the same recites:

a clamping and lifting member that is included in the first insertion instrument and that has a clamping member which clamps the living-body tissue that is an object of treatment, and a lifting member which lifts the living-body tissue through bending;

a tissue retainer member that is included in the second insertion instrument and that controls the lifting of a peripheral tissue of the living-body tissue clamped and lifted by the clamping and lifting member included in the first insertion instrument;

Independent claim 38 has similar recitations. The device of Adams includes a forceps (26) that pulls tissue into the area between the stationary part (18) and movable part (20) of the stapler (10). However, Adams does not disclose that the tissue is lifted through bending. In contrast, as is clearly shown in Figure 8 of the present application, the tissue (27) is lifted by bending of the endoscope (2). Such bending is not possible in the device of Adams because the endoscope (16) is fixed in the stationary part (18) of the stapler and cannot bend (see Figure 2 of Adams).

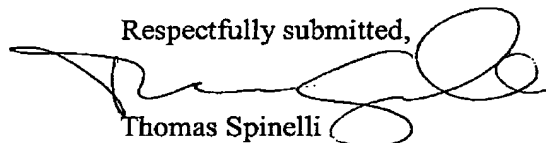
Thus, an endoscopic treatment system having the features discussed above and as recited in independent claims 1 and 38, is nowhere disclosed in Adams. Since it has been decided that "anticipation requires the presence in a single prior art reference, disclosure of

each and every element of the claimed invention, arranged as in the claim,"¹ independent claims 1 and 38 are not anticipated by Adams. Accordingly, independent claims 1 and 3 patentably distinguish over Adams and are allowable. Claims 6, 8-14, 17-19 and 35 being dependent upon claim 1, are thus at least allowable therewith. Consequently, the Examiner is respectfully requested to withdraw the rejection of claims 1, 6, 8-14, 17-19, 35 and 38 under 35 U.S.C. § 102(b).

Furthermore, new claim 41 has been added to further define the patentable invention. New claim 41 is fully supported in the original disclosure. Thus, no new matter has been entered into the disclosure by way of the addition of new claim 41. Applicants submit that independent claim 41 patentably distinguishes over the prior art and is allowable.

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



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¹ Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).